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PATENT
Attorney Docket No. 7552.0032

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Giorgio De Cicco	)	Group Art Unit: 3761
	)	
Application No.: 10/500,336	)	Examiner: Jacqueline F. Stephens
	)	
Filed: June 28, 2004	)	
	)	
For: NON-INVASIVE DEVICE FOR MEASURING BLOOD TEMPERATURE IN A CIRCUIT FOR THE EXTRACORPOREAL CIRCULATION OF BLOOD, AND EQUIPMENT PROVIDED WITH THIS DEVICE	)	Confirmation No.: 9867

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In an election of species requirement dated March 26, 2007, the Examiner required restriction under 35 U.S.C. §§ 121 and 372 between:

Group I - Claims 33-35, 52, 53, 57-64, allegedly drawn to a device for measuring blood temperature;

Group II - Claims 36-40, allegedly drawn to a temperature sensor;

Group III - Claims 41-43, allegedly drawn to connecting portion;

Group IV - Claims 44-48, allegedly drawn to filter;

Group V - Claims 54-56, allegedly drawn to a regulating device.

Applicants provisionally elect to prosecute Group I, claims 33-35, 52, 53, 57-64, allegedly drawn to a device for measuring blood temperature **with traverse**.

In the Office Action, the Examiner asserted that Groups I, II, III, IV, and V are directed to "inventions . . . [that] do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features." (Office Action at 2.) Applicants respectfully disagree. Under 37 C.F.R. § 1.475, which governs national stage applications, Groups I, II, III, IV, and V are one unitary invention. 37 C.F.R. § 1.475 states that:

> (a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(Emphasis added.)

Applicants submit that there is certainly a "technical relationship" between the alleged inventions in Groups I, II, III, IV, and V. Despite the Examiner's contention otherwise, all of the claims identified in Groups I, II, III, IV, and V are drawn to a device for measuring blood temperature. Moreover, every one of the claims requires a temperature sensor, a connecting portion, and a filter, all of which are technical features recited in independent claim 33. In fact, claim 33 is the only independent claim pending in this application, and every claim in Groups I, II, III, IV, and V depends from independent claim 33. Further, even if these dependent claims represented separate inventions, PCT Rule 13.4 provides that such separate inventions are permissible if recited in dependent claims of a single application. PCT Rule 13.4 states that "[s]ubject to Rule 13.1, it shall be permitted to include in the same international application a

reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention." Accordingly, this restriction requirement should be withdraw for at least this reason.

Moreover, PCT Article 27.1 states that "[n]o national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations." Because similar claims were prosecuted in the international application to which this application claims benefit, and no unity of invention objection was raised (as governed by PCT Rules 13.1 and 13.2), the USPTO is precluded for now making such an objection. Accordingly, Applicants respectfully request that this restriction requirement be withdrawn.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 6, 2007

By: _____
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